

# **EXHIBIT J**

Arthur Leslie Gill

May 10, 2016

Page 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JENNIFER PELLOW as Personal  
Representative of the Estate  
of NATHAN WESLEY PELLOW,  
Plaintiff,

-vs-

Case No. 15-11765

KEVIN BARNHILL, SHANE McKIBBEN, Hon. Terrance G. Berg  
ARTHUR L. GILL, ROBERT ROY,  
JOHN ADAMS, and DALE VAN HORN,  
Jointly and Severally,  
Defendants.

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DEPONENT: ARTHUR LESLIE GILL  
DATE: Tuesday, May 10, 2016  
TIME: 2:49 p.m.  
LOCATION: Davis, Burket, Savage, Listman, Taylor  
10 S. Main Street, Suite 401  
Mt. Clemens, Michigan  
REPORTER: John J. Slatin, RPR, CSR-5180  
Certified Shorthand Reporter

(Appearances listed on page 2)

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| <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOEL B. SKLAR (P38338)</p> <p>4 Law Offices of Joel B. Sklar</p> <p>5 615 Griswold Street, Suite 1116</p> <p>6 Detroit, Michigan 48226</p> <p>7 (313) 963-4529</p> <p>8 joel@joelbsklarlaw.com</p> <p>9 Appearing on behalf of the Plaintiff.</p> <p>10</p> <p>11 JULIE L. DRUZINSKI (P72105)</p> <p>12 Garan Lucow Miller, P.C.</p> <p>13 1155 Brewery Park Boulevard, Suite 200</p> <p>14 Detroit, Michigan 48207</p> <p>15 (313) 446-5501</p> <p>16 jdruzinski@garanlucow.com</p> <p>17 Appearing on behalf of the Defendants</p> <p>18 Barnhill, McKibben, Roy, Adams and VanHorn.</p> <p>19</p> <p>20 (Appearances continued on page 3)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4</p> <p>5 ARTHUR LESLIE GILL</p> <p>6</p> <p>7 Examination by Mr. Sklar 5</p> <p>8 Examination by Ms. Druzinski 39</p> <p>9 Examination by Mr. Listman 59</p> <p>10 Re-Examination by Mr. Sklar 60</p> <p>11 Re-Examination by Ms. Druzinski 62</p> <p>12</p> <p>13 EXHIBITS (Attached): IDENTIFIED</p> <p>14</p> <p>15 Exhibit 1 Photograph 5</p> <p>16 Exhibit 2 Warren Police Department, 5</p> <p>17 Case Report, CR No.</p> <p>18 130052560</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                        |
| Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 APPEARANCES CONTINUED:</p> <p>2</p> <p>3 WILLIAM N. LISTMAN (P52030)</p> <p>4 Davis, Burket, Savage, Listman, Taylor</p> <p>5 10 S. Main Street, Suite 401</p> <p>6 Mt. Clemens, Michigan 48043</p> <p>7 (586) 469-4300</p> <p>8 wlistman@davislistman.com</p> <p>9 Appearing on behalf of the Defendant Gill.</p> <p>10</p> <p>11 ALSO PRESENT: Jennifer Pellow</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                  | <p>1 Tuesday, May 10, 2016</p> <p>2 Mt. Clemens, Michigan</p> <p>3 2:49 p.m.</p> <p>4 * * *</p> <p>5 (Deposition Exhibits 1 and</p> <p>6 2 marked for identification.)</p> <p>7 * * *</p> <p>8 MR. SKLAR: Let the record reflect that this is the</p> <p>9 discovery deposition of Arthur Gill, taken pursuant to</p> <p>10 Notice, to be used for all purposes allowed by the</p> <p>11 Federal Court Rules and Federal Rules of Evidence.</p> <p>12 * * *</p> <p>13 ARTHUR LESLIE GILL,</p> <p>14 having been first duly sworn, was examined and testified</p> <p>15 as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. SKLAR:</p> <p>18 Q. Is it Sergeant Gill?</p> <p>19 A. It's Art Gill.</p> <p>20 Q. Art Gill. Forgive me. I apologize.</p> <p>21 A. No, that's okay.</p> <p>22 Q. Mr. Gill, have you ever given had your deposition taken</p> <p>23 before?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. I'm going to go through the ground rules, and</p> |

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| <p>1 then I'll kind of get into your previous depositions;<br/> 2 okay?<br/> 3 A. Okay.<br/> 4 Q. Really what a deposition is, at least the way I see it,<br/> 5 is just to try to find out what a witness knows or<br/> 6 doesn't know. If there's a question I ask you that<br/> 7 isn't clear, that doesn't make sense, you simply can't<br/> 8 answer in the form that I ask it, just tell me, and I'll<br/> 9 do my best to rephrase it. If you don't know an answer,<br/> 10 just tell me you don't know. If you don't recall,<br/> 11 that's perfectly fair. Just tell me you don't recall.<br/> 12 A. Okay.<br/> 13 Q. Let me get the question out before you give a response<br/> 14 so the court reporter can get everything down. And if<br/> 15 at any time you need a break, just tell me.<br/> 16 A. Okay.<br/> 17 Q. And you're entitled to that.<br/> 18 In what cases -- how many times have you been<br/> 19 deposed?<br/> 20 A. This is just an estimate. I've been an officer for a<br/> 21 long time.<br/> 22 Twenty to 25.<br/> 23 Q. Okay. And were some of those excessive force cases or<br/> 24 allegations of excessive force?<br/> 25 A. Not against me but other officers.</p> | <p>1 Q. Go ahead.<br/> 2 A. I was hired in '98.<br/> 3 Q. Yep.<br/> 4 A. I was promoted to corporal, detective, back in<br/> 5 approximately 2008 or '09.<br/> 6 And I was promoted to sergeant approximately 2011,<br/> 7 I believe it was.<br/> 8 Q. Okay. And this is an idiotic question but I'll ask it<br/> 9 anyway.<br/> 10 On August 30, 2013, you were employed by the City<br/> 11 of Warren?<br/> 12 A. Yes, sir.<br/> 13 Q. And you were employed as a police officer, a sergeant,<br/> 14 specifically, in the police force?<br/> 15 A. Yes, sir.<br/> 16 Q. Okay. Good.<br/> 17 And there came a time that you received a copy of<br/> 18 this Complaint; true?<br/> 19 A. Yes, sir.<br/> 20 Q. All right. When you received the Complaint -- when<br/> 21 everybody was served with the Complaint, did that in any<br/> 22 way impact your employment with the City of Warren?<br/> 23 A. I was terminated well prior to receiving the Complaint.<br/> 24 Q. Okay. And what were you -- what were you terminated<br/> 25 for?</p>                      |
| Page 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>1 I don't recall. They've been a variety of<br/> 2 different things over a long period of time.<br/> 3 Q. Okay. All right. So, this is the first time you've<br/> 4 been named as a party?<br/> 5 A. No, I've been named as a party before.<br/> 6 Q. Okay. So, let me understand.<br/> 7 When you've been named as a party before, it's<br/> 8 simply because you were present at the scene?<br/> 9 A. Correct.<br/> 10 Q. Okay. The -- you mentioned you had been a police<br/> 11 officer for a long time?<br/> 12 A. Yes, sir.<br/> 13 Q. How long?<br/> 14 A. Well, the City of Warren, 16 years.<br/> 15 Q. Okay.<br/> 16 A. The University of Detroit Mercy, I was in grad school.<br/> 17 While there, I was an officer there. I spent some time<br/> 18 in Royal Oak Township, and then in the Marine Corps back<br/> 19 in the mid-eighties.<br/> 20 Q. Okay. And let's just go with the City of Warren.<br/> 21 You started, I take it, as just a patrol officer?<br/> 22 A. Yes, sir.<br/> 23 Q. All right. And did you -- can you go through your<br/> 24 promotions with me?<br/> 25 A. Sure.</p>                                                                                          | <p>1 MR. LISTMAN: Your Honor --<br/> 2 MR. SKLAR: "Your Honor"? I wish.<br/> 3 MR. LISTMAN: I'm going to place an objection on<br/> 4 the record at this point. We're going to object to him<br/> 5 testifying to anything in that regard. I mean, the<br/> 6 Fifth Amendment --<br/> 7 MR. SKLAR: Okay.<br/> 8 MR. LISTMAN: -- 404, and 609. FRE 404 and FRE<br/> 9 609.<br/> 10 MR. SKLAR: I got it.<br/> 11 BY MR. SKLAR:<br/> 12 Q. I take it you're no longer working for the City of<br/> 13 Warren?<br/> 14 A. I am not.<br/> 15 Q. Okay. Just tell me when you stopped.<br/> 16 A. It was April 17th of '14.<br/> 17 Q. Okay. And let me ask you this question: Did anything<br/> 18 that relates to Nathan Pellow impact your employment at<br/> 19 the City of Warren?<br/> 20 MR. LISTMAN: Again, we've got an objection on the<br/> 21 record regarding that type of testimony.<br/> 22 MR. SKLAR: Okay.<br/> 23 BY MR. SKLAR:<br/> 24 Q. Let me ask you this question: With Mr. Pellow, did<br/> 25 you -- did you report the incident to the City of</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 Warren?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Okay. How did you do so?</p> <p>4 A. At the scene, I briefed Captain Matheney on what took</p> <p>5 place, and he didn't seem to think that what I told him</p> <p>6 was accurate and we would have a debriefing at a later</p> <p>7 time.</p> <p>8 Q. What did you tell Captain Matheney?</p> <p>9 A. That an Officer McKibben had stood on Mr. Pellow's back</p> <p>10 and jumped up and down while he was handcuffed.</p> <p>11 Q. Okay. And is this something you witnessed?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And was -- did this precipitate his death? Mr. Pellow?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. What did Captain Matheney -- you said he -- what</p> <p>16 did -- I know -- say it again.</p> <p>17 What did Captain Matheney tell you?</p> <p>18 A. I briefed Captain Matheney on the entire situation of</p> <p>19 the information that I had at that time, including</p> <p>20 Mr. -- or Officer McKibben's actions. Mr. -- Captain</p> <p>21 Matheney said basically that didn't happen, and we'll</p> <p>22 have a debriefing when we get back to the station.</p> <p>23 Q. Okay. And then what did you do in regards to the Pellow</p> <p>24 matter?</p> <p>25 A. Well, I called the detective bureau, evidence</p>                                                                                                       | <p style="text-align: right;">Page 12</p> <p>1 I arrived on scene, and once I arrived on scene, on</p> <p>2 the way there, they said they had moved from the Doncea</p> <p>3 location to a street next to him called Nuway. So, I</p> <p>4 entered Nuway, saw the fire truck, passed the fire</p> <p>5 truck, and one of the officers said that -- "Hey, Sarg,</p> <p>6 you passed us up," because I couldn't see where they</p> <p>7 were.</p> <p>8 I backed up and saw them. They were to my left,</p> <p>9 which was the west side of Nuway.</p> <p>10 Q. Okay. How many officers did you see when you showed up?</p> <p>11 A. Two officers and four to five firemen.</p> <p>12 Q. Who were the two officers?</p> <p>13 A. Shane McKibben and Kevin Barnhill.</p> <p>14 Q. Okay. Did they come -- do you know if they came in one</p> <p>15 squad car or two?</p> <p>16 A. Each one was in a one scout car assignment.</p> <p>17 Q. Okay. And tell me what you did next.</p> <p>18 A. Well, I stopped the car. I exited and went to the</p> <p>19 location where they were. They were by a trailer park</p> <p>20 by some steps. Mr. Pellow was down on the ground. The</p> <p>21 officers and firemen were on top of Mr. Pellow trying to</p> <p>22 get him in custody.</p> <p>23 Q. Okay. And when Mr. Pellow was on the ground -- I'm</p> <p>24 going to show you a photograph. Tell me if this</p> <p>25 refreshes your recollection of where he was.</p> |
| <p style="text-align: right;">Page 11</p> <p>1 technicians to document all the scene, and we never had</p> <p>2 the debriefing, despite the fact of my repeated requests</p> <p>3 to Captain Matheney for that debriefing.</p> <p>4 Q. Okay. What information -- tell me this: Other than --</p> <p>5 what was the officer who jumped on the back?</p> <p>6 A. Shane McKibben.</p> <p>7 Q. McKibben.</p> <p>8 What -- let's just start -- let me start from the</p> <p>9 beginning and we'll get there; okay?</p> <p>10 A. Sure.</p> <p>11 Q. On August 30th, 2013, how did you first become aware of</p> <p>12 the incident involving Mr. Pellow?</p> <p>13 A. It came over the air as an accident on Doncea, which is</p> <p>14 a trailer park area in the Ten and Ryan location. The</p> <p>15 officer arrived. Shortly after he arrived there, he</p> <p>16 requested assistance. And McKibben was the second</p> <p>17 officer responding.</p> <p>18 Once McKibben got there, shortly thereafter one of</p> <p>19 the officers -- I don't know which one -- said over the</p> <p>20 air, "Send additional officers."</p> <p>21 And Dispatch attempted to find another officer. I</p> <p>22 knew we were busy that day, and they could not. I was</p> <p>23 on the road at the time. I was a ways away, around</p> <p>24 8 and a half and Van Dyke area. I advised Dispatch that</p> <p>25 I would be headed that way, but I was a ways off.</p> | <p style="text-align: right;">Page 13</p> <p>1 A. Sure.</p> <p>2 Q. I had an exhibit marked 1. This is during discovery.</p> <p>3 It's a photograph.</p> <p>4 A. It would be in this area right -- approximately right</p> <p>5 here.</p> <p>6 Q. Okay. Great. So, you're pointing to the grass area to</p> <p>7 the right of the steps?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay.</p> <p>10 MS. DRUZINSKI: If I may interrupt real quick?</p> <p>11 What's the Bates number on the bottom of that?</p> <p>12 MR. LISTMAN: It's 000946.</p> <p>13 MS. DRUZINSKI: Thank you.</p> <p>14 MR. SKLAR: Okay.</p> <p>15 MR. LISTMAN: Do you know what? Can I -- how about</p> <p>16 if I make a copy of this?</p> <p>17 MR. SKLAR: Okay.</p> <p>18 (Short recess at 2:57 p.m.)</p> <p>19 * * *</p> <p>20 (Record resumed at 2:58 p.m.)</p> <p>21 BY MR. SKLAR:</p> <p>22 Q. Mr. Gill, I'm showing you Exhibit 1, and -- here you go.</p> <p>23 I'll look at the copy. You can look at the original.</p> <p>24 A. Sure.</p> <p>25 Q. And you had noted that you had seen Nathan Pellow.</p>                                                                                                                                                                                                                                                                                                                                                                                |

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| <p style="text-align: right;">Page 14</p> <p>1 Was he face down?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And Nathan Pellow was face down on the grass area</p> <p>4 to the right of these red stairs; correct?</p> <p>5 A. That is correct.</p> <p>6 Q. And what officers did you see?</p> <p>7 A. Officer McKibben, Officer Barnhill, and approximately</p> <p>8 four to five firemen.</p> <p>9 Q. Okay. And tell me, what happened next? What do you see</p> <p>10 next?</p> <p>11 A. Well, I am running from this -- this is Nuway Street. I</p> <p>12 approach. They're on top of Mr. Pellow, who is face</p> <p>13 down. They're trying to get him handcuffed.</p> <p>14 Q. Okay.</p> <p>15 A. Shortly after I arrive, just within a few seconds, 30</p> <p>16 seconds possibly, they finally got his hands cuffed and</p> <p>17 he was under control.</p> <p>18 Q. Okay. And is he still face down?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Are his hands cuffed only, or are his hands and ankles</p> <p>21 cuffed?</p> <p>22 A. I only recall his hands being cuffed.</p> <p>23 Q. Okay. Then what happens?</p> <p>24 A. Everyone started getting off of Mr. Pellow. The firemen</p> <p>25 had started walking to their rig. I recall one of them</p>                 | <p style="text-align: right;">Page 16</p> <p>1 Q. Okay. Do you know how long Mr. McKibben had been</p> <p>2 standing on Mr. Pellow's back?</p> <p>3 A. No, I don't.</p> <p>4 Q. Okay. Did you see him jump on the back?</p> <p>5 A. It wasn't a jump. It was more of a bounce.</p> <p>6 Q. Okay. And then what happened?</p> <p>7 A. Well, I approached Mr. Pellow to just assess to see if</p> <p>8 he was okay, and he had seemed like his face turned a</p> <p>9 little -- his skin turned a little bit of a darker</p> <p>10 color, and he was sort of gasping for air at that point.</p> <p>11 Q. And then what happened?</p> <p>12 A. I ran to the firemen who were -- their rig was at the</p> <p>13 Nuway -- on the street, Nuway, in front of this trailer,</p> <p>14 and I requested their assistance. I said, "Hey, this</p> <p>15 guy needs some help."</p> <p>16 Q. Then what happened?</p> <p>17 A. They all ran over to Mr. Pellow, loaded him up and took</p> <p>18 him away.</p> <p>19 Q. Okay. Was he still cuffed at the time?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right. Did you speak to Mr. -- or Officer McKibben</p> <p>22 about what he was doing?</p> <p>23 A. Not at that time. I think we talked about it a little</p> <p>24 bit later.</p> <p>25 Q. And what did Officer McKibben tell you?</p> |
| <p style="text-align: right;">Page 15</p> <p>1 said they had gotten bit. Officer Barnhill said he had</p> <p>2 suffered a shoulder injury, and everyone had just</p> <p>3 started walking away from Mr. Pellow outside of</p> <p>4 Mr. -- Officer McKibben.</p> <p>5 Q. At that time, as far as you could see, was Nathan Pellow</p> <p>6 alive?</p> <p>7 A. Yes, he was.</p> <p>8 Q. Was he breathing?</p> <p>9 A. Yes, he was.</p> <p>10 Q. Did he say anything?</p> <p>11 A. No.</p> <p>12 Q. Okay. And how do you know he was alive?</p> <p>13 A. Well, I looked at him. He was moving a little bit, and</p> <p>14 he was -- he was breathing.</p> <p>15 Q. Okay. Then what did you see?</p> <p>16 A. There was a white female that approached me. I don't</p> <p>17 know who it was. We never did engage in any</p> <p>18 conversation because as soon as she approached me, she</p> <p>19 looked over my shoulder. I naturally responded, looked</p> <p>20 over my right shoulder and saw McKibben standing on</p> <p>21 Mr. Pellow's back.</p> <p>22 Q. Okay. For how long did you see McKibben stand on</p> <p>23 Mr. Pellow's back?</p> <p>24 A. It was only a second or two, because as soon as I saw</p> <p>25 it, I ordered him to get off of Mr. Pellow.</p> | <p style="text-align: right;">Page 17</p> <p>1 A. I don't remember.</p> <p>2 Q. Okay. When -- based on your experience as an officer,</p> <p>3 is standing and bouncing on someone's back when they're</p> <p>4 face down appropriate police procedure?</p> <p>5 A. No, sir.</p> <p>6 Q. Have you ever been trained to do that ever?</p> <p>7 A. No, sir.</p> <p>8 Q. Okay. And did that shock you?</p> <p>9 A. I don't know if "shocking" would be the right word.</p> <p>10 It certainly wasn't appropriate, so that's why I</p> <p>11 ordered him off of Mr. Pellow.</p> <p>12 Q. Okay. And when did you discover that Mr. Pellow had</p> <p>13 died?</p> <p>14 A. I had received a call from one of the officers because</p> <p>15 two officers -- since Mr. Pellow was so combative with</p> <p>16 officers, I recall that two-officer crew, VanHorn and</p> <p>17 Adams, escorted or accompanied the fire department to</p> <p>18 the hospital.</p> <p>19 Q. Okay.</p> <p>20 A. Shortly thereafter, I received a call from one of the</p> <p>21 officers that Mr. Pellow had passed away.</p> <p>22 Q. Okay. Just so I'm super clear on this, at the time that</p> <p>23 you saw Officer McKibben stand and bounce on the back of</p> <p>24 Mr. Pellow, Mr. Pellow was in handcuffs and subdued;</p> <p>25 true?</p>       |



Arthur Leslie Gill

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| <p style="text-align: right;">Page 18</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And when you learned that -- strike that.</p> <p>3 Did you talk to any other officers other than</p> <p>4 McKibben about him standing on Mr. Pellow's back?</p> <p>5 A. Captain Matheney.</p> <p>6 Q. Okay. And is that when -- again -- and I apologize this</p> <p>7 is repetitive, but just let me do it.</p> <p>8 A. Sure.</p> <p>9 Q. And how soon after, you know, you were at the trailer</p> <p>10 depicted on Exhibit 1 did you talk to Captain Matheney?</p> <p>11 A. He didn't show up right away. It was probably</p> <p>12 20 minutes to a half hour.</p> <p>13 Q. Okay. And then --</p> <p>14 A. And that's just a guesstimation. I might be off a</p> <p>15 little bit.</p> <p>16 Q. And I'm taking it as that. I understand time is</p> <p>17 difficult, quite frankly, to quantify so easily.</p> <p>18 And when you told Captain -- exactly what did you</p> <p>19 tell Captain Matheney as far as you can recall?</p> <p>20 A. I told Captain Matheney what had happened; that there</p> <p>21 was a vehicle accident; Mr. Pellow had fought with</p> <p>22 officers; that it made its way to the Nuway location;</p> <p>23 and officers requested firemen to assist, which is sort</p> <p>24 of abnormal. Firemen pretty much have a hands-off on</p> <p>25 any police-type matters. And whenever they have a</p>                            | <p style="text-align: right;">Page 20</p> <p>1 basically said, "Not today. I've got things to do," and</p> <p>2 just brushed me off basically.</p> <p>3 Q. Okay.</p> <p>4 A. And then the next day I asked him the same thing, and</p> <p>5 once again he brushed me off.</p> <p>6 Q. Okay. And did that concern you?</p> <p>7 A. Well, I know he's a busy man, but I mean this is a</p> <p>8 serious incident, so I thought that maybe it would have</p> <p>9 a little bit more urgency to it.</p> <p>10 Q. Okay. And what did you do when Captain Matheney blew</p> <p>11 you off?</p> <p>12 A. Well, unfortunately, two weeks ago, when I met</p> <p>13 Mr. Listman here, I was able to review all the police</p> <p>14 reports, and I noticed that some of the officers said,</p> <p>15 the first line in their report:</p> <p>16 "As a condition of employment with the</p> <p>17 Warren Police Department, I'm ordered to write</p> <p>18 this report from Captain Matheney."</p> <p>19 That sort of tells me that they had a debriefing of</p> <p>20 some kind because more than -- there was about three,</p> <p>21 four, five officers put that in their report.</p> <p>22 That's typically what's written after a debriefing.</p> <p>23 Q. Okay. And when you read the reports, did they appear to</p> <p>24 be accurate?</p> <p>25 A. For the most part, yes.</p> |
| <p style="text-align: right;">Page 19</p> <p>1 combative individual, they call the police. So, they're</p> <p>2 pretty much hands-off. I don't know if it's in their</p> <p>3 policies, but they very rarely get involved in police</p> <p>4 matters.</p> <p>5 Q. Okay.</p> <p>6 A. So, I told Matheney all of these things on top of</p> <p>7 McKibben's actions, and Matheney basically told me, he</p> <p>8 said, "That didn't happen, and we'll have a debriefing.</p> <p>9 We'll talk about it later on when we get back to the</p> <p>10 station."</p> <p>11 Q. And was that the end of the conversation?</p> <p>12 A. That was the end of the conversation with Mr. -- Captain</p> <p>13 Matheney.</p> <p>14 Q. At the time Captain Matheney said, "That didn't happen,"</p> <p>15 what was your experience? I mean, were you shocked?</p> <p>16 Surprised? Bewildered? What --</p> <p>17 A. No. I figured we'd talk about it in the briefing, and</p> <p>18 we'd communicate a little more closely then.</p> <p>19 Q. Okay. And you mentioned the debriefing never occurred?</p> <p>20 A. Not with me, no.</p> <p>21 Q. Okay. Were -- tell me, what was the next time you had</p> <p>22 any discussion or -- concerning Mr. Pellow with any of</p> <p>23 your officers, anybody at the Warren --</p> <p>24 A. Well, I approached Captain Matheney back at the station,</p> <p>25 hours later, in regards to the debriefing, and he</p> | <p style="text-align: right;">Page 21</p> <p>1 Q. Okay. You had written a report as well?</p> <p>2 A. I did not.</p> <p>3 Q. You did not?</p> <p>4 A. No, sir.</p> <p>5 Q. Okay. Well, let me show you what's been marked as</p> <p>6 Exhibit 2, and I'll try to get you to the page. Maybe</p> <p>7 you can help me out.</p> <p>8 Here is Exhibit 2, and if you go to -- I'll try to</p> <p>9 get you there a little bit quicker.</p> <p>10 I'm looking at page 19 of 29. And it's -- and tell</p> <p>11 me if -- I'm kind of middle of the page. It says "CR</p> <p>12 number," and it gives, you know, "130052580-009(sic)."</p> <p>13 And then it says: "Written By: WRGILLA (00434), Date</p> <p>14 8-31-2013, 11:29 a.m."</p> <p>15 Am I reading that correctly?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And it appears to indicate that this is your report.</p> <p>18 Am I reading that correctly or incorrectly?</p> <p>19 A. It appears it would be my report.</p> <p>20 Q. Is it your report?</p> <p>21 A. No, sir.</p> <p>22 Q. Okay. Do you have any idea how this was created if it</p> <p>23 wasn't your report?</p> <p>24 A. It's not my report. I didn't do it. I mean, the</p> <p>25 department has our user names and passwords, and I'm not</p>                                                                                                              |

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| Page 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>1 assuming anything, but that's not my report.</p> <p>2 Q. Okay. Did you write a report?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. Did anybody ask you to write a report?</p> <p>5 A. No, sir.</p> <p>6 Q. Typically, in this type of situation, would you write a</p> <p>7 report?</p> <p>8 A. I was waiting for the debriefing, and then I would have</p> <p>9 written a report, yes.</p> <p>10 Q. Okay. Let's go through that because I'm not familiar</p> <p>11 with what happens at the City of Warren Police</p> <p>12 Department.</p> <p>13 When there's a -- in this case, would there be a</p> <p>14 debriefing because there was a death or --</p> <p>15 A. It's a serious incident. So, yes, there would be a</p> <p>16 debriefing. All the officers would get together and the</p> <p>17 captain would find out -- you know, get a holistic view</p> <p>18 of what occurred, because each officer sees different</p> <p>19 things, and when you have them all together, you can</p> <p>20 sort of piece things together a little better.</p> <p>21 Q. Okay. And I take it you've been in debriefings before?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. And in this situation, would all of the officers</p> <p>24 who arrived at the scene be part of that debriefing?</p> <p>25 A. Typically.</p>                             | <p>1 to you, why did that -- I know you didn't write the</p> <p>2 report.</p> <p>3 Why did the date surprise you?</p> <p>4 A. Because I always write my reports on that day. There's</p> <p>5 no reason to write a report the following day or the</p> <p>6 following week. Evidence technicians, detectives,</p> <p>7 people like that who have ongoing investigations or a</p> <p>8 processing of evidence, might not write a report that</p> <p>9 day. They might write it the next day or the next week.</p> <p>10 But my involvement was so small that I would have</p> <p>11 written it immediately.</p> <p>12 Q. Okay. And had you written a report, would you have</p> <p>13 included what you saw McKibben do?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. You tried to talk to Captain Matheney, you said,</p> <p>16 six or seven times over the course of the next two</p> <p>17 weeks; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And specifically about the Nathan Pellow matter;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And perhaps writing a report so you can document what</p> <p>23 you saw; right?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And did -- what did Captain Matheney say to you</p>                                                                                                                                                                    |
| Page 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 Q. Okay. And were you called to be part of the debriefing?</p> <p>2 A. No.</p> <p>3 Q. Do you have any idea why not?</p> <p>4 A. I do not.</p> <p>5 Q. Okay. Did it surprise you, you weren't called to be</p> <p>6 part of the debriefing?</p> <p>7 A. Well, you know, as time goes on, I mean, other things --</p> <p>8 I know the Pellow -- you know, a death is serious,</p> <p>9 and -- but we have lots of deaths, unfortunately. And</p> <p>10 as time goes on, I requested from Captain Matheney,</p> <p>11 "When are we going to have this debriefing?" probably</p> <p>12 five, six, seven times over a two-week period, and he</p> <p>13 just kept -- you know, for lack of a better term --</p> <p>14 blowing me off, and I just let it go. You sort of</p> <p>15 forget about things and you move on to other things.</p> <p>16 It's in your rearview mirror, and you just move on.</p> <p>17 Q. Okay.</p> <p>18 A. So -- and then I notice that this report was written on</p> <p>19 the day after, which has got my attention when I saw it</p> <p>20 from Attorney Listman the other day.</p> <p>21 Q. So, you've just recently seen these reports?</p> <p>22 A. About two weeks ago.</p> <p>23 Q. Okay.</p> <p>24 A. Not even two weeks ago.</p> <p>25 Q. All right. And the date of 8-31-2013 that's attributed</p> | <p>1 every time you saw him?</p> <p>2 A. Well, it was just passing in the hall. I'm usually in</p> <p>3 the watch commander's office where there is a glass and</p> <p>4 there's a men's bathroom to the left when you're inside</p> <p>5 looking out. And he just walks by. It's a locker room,</p> <p>6 and we just have quick, brief comments. "Hey, are we</p> <p>7 going to have that debriefing?"</p> <p>8 And sometimes he would answer me. Sometimes he</p> <p>9 would say "no," or "another time."</p> <p>10 I can't recall exactly what he said.</p> <p>11 Q. Okay. And did you speak to any other executive officer?</p> <p>12 A. He's third in command in the whole department, so that's</p> <p>13 high enough.</p> <p>14 Q. Okay. Good.</p> <p>15 Did you speak to any other officers concerning the</p> <p>16 Nathan Pellow matter?</p> <p>17 A. Well, Barnhill and McKibben had come to me a couple days</p> <p>18 later, and they expressed that they were having</p> <p>19 difficulty handling -- not handling, but difficulty with</p> <p>20 the Pellow incident. And I suggested to Matheney at one</p> <p>21 point that maybe they could benefit from some</p> <p>22 counseling.</p> <p>23 To my knowledge, they never did. I don't -- they</p> <p>24 may have, but to my knowledge I don't know if they ever</p> <p>25 sought any professional therapy or counseling.</p> |



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| <p style="text-align: right;">Page 26</p> <p>1 Q. Okay. Have you reviewed the written reports of Barnhill<br/>2 and McKibben?</p> <p>3 A. Yes.</p> <p>4 Q. Are those accurate?</p> <p>5 A. I read all the reports. And the packet I got was so<br/>6 redundant, I would have to read them again. But they<br/>7 appear to be mostly accurate.</p> <p>8 Q. Other than -- did -- nowhere -- and I'll represent this<br/>9 to you, and it's in the report -- do any of the written<br/>10 reports indicate that McKibben was standing and bouncing<br/>11 on Mr. Pellow's back?</p> <p>12 A. No, sir.</p> <p>13 Q. And because of that -- strike that.<br/>14 An accurate and complete report would include that<br/>15 fact; correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And in your review of the documents and as I<br/>18 represent it to you, the fact that it's not in the<br/>19 report, what does that make you think of?</p> <p>20 A. I don't want to speculate. I mean --</p> <p>21 Q. I'm going to ask you to speculate.</p> <p>22 A. -- they just didn't want that information to come out.</p> <p>23 Q. Okay. Do you know if any of the -- if any other fire<br/>24 department -- you know, firefighter or any other officer<br/>25 altered any reports of any kind?</p> | <p style="text-align: right;">Page 28</p> <p>1 read it again, but --</p> <p>2 Q. At the scene where Mr. Pellow was during this entire<br/>3 incident when he's being -- whatever is happening to<br/>4 him, were there any videotapes that you know of that<br/>5 would capture his arrest?</p> <p>6 A. Not videotapes.<br/>7 Maybe some of the audio.</p> <p>8 Q. Okay. Were people mic'd up?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. And do the -- does the audio portion of the<br/>11 recording go to Dispatch, or how is that recorded; if<br/>12 you know?</p> <p>13 A. It goes to the scout car. Each officer has a mic, and<br/>14 it syncs to the scout car, and that goes with them like<br/>15 when they exit the vehicle, such as -- I know McKibben,<br/>16 I believe, and Barnhill's both had audio.<br/>17 Unfortunately, my audio wasn't -- wasn't there. It<br/>18 was there initially, but it's now gone.</p> <p>19 Q. Okay. So, you also had an audio of what you were saying<br/>20 at the scene; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And part of that audio would capture you telling<br/>23 McKibben to get off Mr. Pellow?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And that audio was gone?</p>                                        |
| <p style="text-align: right;">Page 27</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. Have you heard anything about that at all?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. After the two weeks went by, did you ever make<br/>5 any more inquiries about the Pellow matter?</p> <p>6 A. Do you know what? I think -- after about two weeks and<br/>7 five, six, seven requests, I think it just sort of faded<br/>8 and we moved on.</p> <p>9 Q. Okay. All right. Do you know if there was an<br/>10 investigation concerning the Pellow death by the City of<br/>11 Warren?</p> <p>12 A. By the City of Warren, yes.</p> <p>13 Q. Okay. And is the investigation what I have as Exhibit<br/>14 2, or is there -- or do you think there's something<br/>15 more?</p> <p>16 A. Is this the whole report?</p> <p>17 I mean, I've got a stack this big. So --</p> <p>18 Q. Okay. This is what I have. I have some witness<br/>19 statements, but nothing else like that.</p> <p>20 MR. LISTMAN: If you know.</p> <p>21 BY MR. SKLAR:</p> <p>22 Q. If you know. If you don't, that's okay, too.</p> <p>23 A. No, I don't.</p> <p>24 Q. Okay.</p> <p>25 A. I mean, it appears to be most of it. I would have to</p>                                                                                  | <p style="text-align: right;">Page 29</p> <p>1 A. Well, that day that it occurred, I went back to the<br/>2 station, and part of my responsibility is to lock all<br/>3 the video so they don't disappear, and that's what I did<br/>4 for McKibben, Barnhill and myself.</p> <p>5 And I remember reviewing them. And my audio had<br/>6 captured me ordering McKibben off of Pellow's back and<br/>7 me talking to Captain Matheney in regards to what<br/>8 occurred.</p> <p>9 Q. Well -- and you're 100 percent certain that you<br/>10 preserved that recording; correct?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Okay. Who has authority to -- let me ask you this<br/>13 question: Once the evidence, like your recording, is<br/>14 locked, how could it be erased?</p> <p>15 A. I think the videotapes are still there.</p> <p>16 Q. Okay.</p> <p>17 A. But the audio from my video is not -- was not part of<br/>18 Mr. Listman's disk when we reviewed it a couple weeks<br/>19 ago.</p> <p>20 Q. Okay. And how is that possible as far as you understand<br/>21 it?</p> <p>22 A. I don't know.</p> <p>23 Q. Okay. Do other people within the department have<br/>24 authority to get that evidence, like the recordings?</p> <p>25 A. You say "authority"?</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 I mean they maintain it. They store it. They've</p> <p>2 got it.</p> <p>3 Q. Right.</p> <p>4 But I guess what I'm trying to figure out is,</p> <p>5 whoever has it, whoever got it, can they delete it?</p> <p>6 A. Well, it's been deleted off of this disk. I mean, I</p> <p>7 don't know how -- I'm not very technically savvy, and I</p> <p>8 don't know how you reproduce a disk without the sound,</p> <p>9 but once you go lights and sirens on a scout car, the</p> <p>10 transmission and audio automatically goes on, and it was</p> <p>11 on for all three of the scout cars.</p> <p>12 Q. Is it digital?</p> <p>13 A. I don't know.</p> <p>14 Q. Okay. I'm just curious. I know some departments still</p> <p>15 use videotapes; others use little cards.</p> <p>16 I'm trying to figure out, do you guys -- if you</p> <p>17 know, that's fine.</p> <p>18 Do you know if you use like a flash drive, a thumb</p> <p>19 drive, or videos?</p> <p>20 If you don't know, that's fine.</p> <p>21 A. It's a microphone that's probably about the size of</p> <p>22 that, a little bit smaller. It's got a clip. You can</p> <p>23 put it in your pocket, clip it on your shoulder, on your</p> <p>24 waistband --</p> <p>25 Q. I got it.</p>                                                                                          | <p style="text-align: right;">Page 32</p> <p>1 Matheney?</p> <p>2 A. No.</p> <p>3 Q. Okay.</p> <p>4 A. Third in command. I felt that that was more than</p> <p>5 sufficient.</p> <p>6 Q. Okay. And has anybody other than your lawyer inquired</p> <p>7 of you or asked you what happened with Nathan Pellow?</p> <p>8 Anything?</p> <p>9 A. No.</p> <p>10 Q. Okay. I mean, you've been in the City of Warren for 16</p> <p>11 years before this; correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right. Has anything like this, where there's maybe</p> <p>14 a police officer acting inappropriately, been swept</p> <p>15 under the rug in your experience?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And can you give me some examples?</p> <p>18 A. I don't know. I would --</p> <p>19 MR. LISTMAN: I think this --</p> <p>20 A. I'm not -- I can't remember. I mean, there's been so</p> <p>21 many different things over the years. I mean, I can't</p> <p>22 give you specifics right now.</p> <p>23 BY MR. SKLAR:</p> <p>24 Q. I'll be more specific.</p> <p>25 Has the Warren Police Department destroyed evidence</p>                                                                                                                                   |
| <p style="text-align: right;">Page 31</p> <p>1 A. -- and on your belt. It all depends on the officer's</p> <p>2 preference.</p> <p>3 And then when you get back to the station, it</p> <p>4 downloads it from the hard drive from the trunk to the</p> <p>5 hard drive at the police department. It just</p> <p>6 automatically syncs and downloads. Other than that, I</p> <p>7 don't have any technical knowledge of how that works.</p> <p>8 Q. That makes two of us.</p> <p>9 And when you're reporting to the device, there's a</p> <p>10 recording device that's maybe -- I don't know -- 3</p> <p>11 inches by 2 inches? Maybe 4 by 2? Something like that?</p> <p>12 A. That's approximate. I would say just a -- that same</p> <p>13 size, just slightly smaller.</p> <p>14 Q. Okay. Other than your lawyer, did you -- and Captain</p> <p>15 Matheney, did you tell anyone else what you saw McKibben</p> <p>16 do with Pellow?</p> <p>17 A. No.</p> <p>18 Q. Okay. Other than your lawyer and other than me today,</p> <p>19 has anybody asked you about what happened with Nathan</p> <p>20 Pellow?</p> <p>21 A. Well, I'm sorry. The last question you just asked me, I</p> <p>22 told Matheney. I don't know if you --</p> <p>23 Q. I did. I understand you told Matheney.</p> <p>24 A. Matheney and then --</p> <p>25 Q. But nobody else in the City of Warren other than</p> | <p style="text-align: right;">Page 33</p> <p>1 as far as you know?</p> <p>2 MS. DRUZINSKI: Objection. Form. Foundation.</p> <p>3 Calls for speculation.</p> <p>4 BY MR. SKLAR:</p> <p>5 Q. In situations -- I got it.</p> <p>6 Has the City of Warren Police -- has the Warren</p> <p>7 Police Department ever destroyed evidence?</p> <p>8 A. They destroy evidence all the time.</p> <p>9 Q. Okay.</p> <p>10 A. When you say that, I just want to make it clear that we</p> <p>11 have a property room and evidence is destroyed.</p> <p>12 Q. Well, I apologize.</p> <p>13 I mean in a way that's not appropriate?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Okay. Has evidence ever -- in this case, you said that</p> <p>16 there was -- your recording is gone; correct?</p> <p>17 A. Yes.</p> <p>18 Q. That there's -- in Exhibit 2, there is a report that's</p> <p>19 attributed to you that never -- you never wrote;</p> <p>20 correct?</p> <p>21 A. I did not generate that report.</p> <p>22 Q. And have you ever seen anything like this before where,</p> <p>23 you know, either recordings are missing or lost, or</p> <p>24 reports are fabricated? Have you ever seen that before</p> <p>25 in your 16 years in the City of Warren?</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 A. I've seen recordings disappear, yes.</p> <p>2 Q. Okay. And is it your understanding that they disappear</p> <p>3 to protect people either from being sued or being</p> <p>4 criminally charged?</p> <p>5 A. I don't know.</p> <p>6 MS. DRUZINSKI: Objection to form and foundation.</p> <p>7 BY MR. SKLAR:</p> <p>8 Q. Okay. What other information do you have about</p> <p>9 Mr. Pellow that you think is important?</p> <p>10 A. The only other thing was, I sent an e-mail after I was</p> <p>11 terminated to hire Howard Shifman -- I'm not sure his</p> <p>12 position, labor relations, labor attorney -- the</p> <p>13 executive lieutenant of the police department, Lawrence</p> <p>14 Garner, the union president, James Moore, my criminal</p> <p>15 attorney at the time, Steve Kaplan, and then another</p> <p>16 attorney that I was speaking to that I was -- for a</p> <p>17 civil matter at the time, but I never did go with her.</p> <p>18 And it had outlined the Pellow matter. It was August</p> <p>19 of -- 21st of '14, which was well before the filing of</p> <p>20 this lawsuit.</p> <p>21 Q. Okay.</p> <p>22 A. But after my termination.</p> <p>23 Q. And what -- as best -- do you have a copy of that</p> <p>24 e-mail?</p> <p>25 A. I do on my phone, yes.</p> | <p style="text-align: right;">Page 36</p> <p>1 Q. Okay. Do you know of any investigation conducted by</p> <p>2 anybody, other than what we're doing as plaintiffs, into</p> <p>3 how your recording got lost or destroyed?</p> <p>4 A. I didn't know until about two weeks ago.</p> <p>5 Actually, it wasn't even two weeks ago. It was</p> <p>6 less than two weeks ago because the first time I met</p> <p>7 with Mr. Listman, he didn't even have my recording, and</p> <p>8 I requested it. And then the next time we met -- I</p> <p>9 don't know -- three or four days later, he had it, and</p> <p>10 then we reviewed it at that time.</p> <p>11 Q. Okay. Has there been any investigation as far as you</p> <p>12 know into the police report that is -- that is contained</p> <p>13 in Exhibit 2 that's attributed to you?</p> <p>14 A. I'm sorry. Could you --</p> <p>15 Q. Yeah.</p> <p>16 A. -- ask that question again?</p> <p>17 Q. Yeah. I apologize.</p> <p>18 As far as you know, has there been any</p> <p>19 investigation into how a police report attributed to you</p> <p>20 that concerns Mr. Pellow exists?</p> <p>21 A. No.</p> <p>22 MR. SKLAR: All right. Let me just step outside</p> <p>23 with my client.</p> <p>24 A. Okay.</p> <p>25 (Short recess at 3:23 p.m.)</p> |
| <p style="text-align: right;">Page 35</p> <p>1 Q. Okay. Could I get a copy of it?</p> <p>2 MR. LISTMAN: We'd have to review it.</p> <p>3 MR. SKLAR: Oh, absolutely.</p> <p>4 A. Keep in mind, that's one section. What I was doing was</p> <p>5 sending it basically to my union attorney due to my</p> <p>6 termination because there was an arbitration and all</p> <p>7 this kind of thing coming up, and it outlined a number</p> <p>8 of different issues that I had with the police</p> <p>9 department, and it was 1 of about a 30-page document.</p> <p>10 BY MR. SKLAR:</p> <p>11 Q. Wow.</p> <p>12 A. So, a lot of it is very personal information.</p> <p>13 Q. I understand. And I'm not looking to get into things</p> <p>14 that are super private. I want to really deal with</p> <p>15 this.</p> <p>16 What did your e-mail indicate about the Pellow</p> <p>17 situation?</p> <p>18 A. Specifically what I told you here.</p> <p>19 Q. Okay. What you've testified here today?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And subsequent to that e-mail, do you know if there was</p> <p>22 any internal investigation or external investigation</p> <p>23 concerning how the Warren Police Department dealt with</p> <p>24 the Pellow matter?</p> <p>25 A. Not to my knowledge.</p>                                                     | <p style="text-align: right;">Page 37</p> <p>1 * * *</p> <p>2 (Record resumed at 3:31 p.m.)</p> <p>3 BY MR. SKLAR:</p> <p>4 Q. Before Mr. McKibben stood and bounced on Mr. Pellow, who</p> <p>5 was handcuffed at the time, was Mr. Pellow in any</p> <p>6 distress as you could see?</p> <p>7 A. Could you describe "distress," please?</p> <p>8 Q. Yeah.</p> <p>9 Was his face purple? Was he having a hard time</p> <p>10 breathing?</p> <p>11 A. Well, he had just fought with several people, so he was</p> <p>12 breathing heavy, out of breath. I remember him only</p> <p>13 having shorts on, no shirt, socks, pants. I remember</p> <p>14 him being very dirty, obviously from the scuffle.</p> <p>15 Q. And the officers were breathing heavy, too?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. Okay. So, Mr. -- before McKibben does what he does,</p> <p>18 Mr. Pellow was breathing as heavy, as far as you could</p> <p>19 see, as the officers that were involved with him?</p> <p>20 A. About equal.</p> <p>21 Q. Okay. And after McKibben steps and bounces on</p> <p>22 Mr. Pellow, who was handcuffed, after that ends, does</p> <p>23 Mr. Pellow's condition physically change?</p> <p>24 A. Yes.</p> <p>25 Q. How?</p>                                                                 |

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| <p style="text-align: right;">Page 38</p> <p>1 A. I did notice his face had turned a darker purple or<br/>2 reddish-purple, and he wasn't just breathing heavily.<br/>3 It seemed like it sort of moved to a gasp. And that's<br/>4 what really got my attention, and that's why I ran to<br/>5 the firemen to summon them to treat Pellow.<br/>6 Q. Okay. Did you tell any of the firemen what had<br/>7 happened?<br/>8 A. No. I just told them that, "Hey, this guy needs some<br/>9 help."<br/>10 Q. Did you see Mr. Pellow with any blood?<br/>11 A. No.<br/>12 Q. All right. If -- in Exhibit 2, I understand that time<br/>13 you didn't write the report that's attributed to you.<br/>14 Do you have any idea who did?<br/>15 A. No, sir.<br/>16 Q. Okay. And, finally, I don't want to get into your<br/>17 criminal matter other than what is the charge?<br/>18 MR. LISTMAN: Again, we're going to place an<br/>19 objection on the record.<br/>20 MR. SKLAR: Okay. That's fine.<br/>21 MR. LISTMAN: Under the Fifth Amendment and FRE 404<br/>22 and FRE 609.<br/>23 MR. SKLAR: And I understand.<br/>24 Okay. I have nothing else for you, sir.<br/>25 A. Thank you.</p>                                                                                                                                               | <p style="text-align: right;">Page 40</p> <p>1 A. That's correct.<br/>2 Q. Do you know the identity of any of the firefighters?<br/>3 A. I do not know any firefighter in the City of Warren. I<br/>4 know lots of their faces, but I know none of them<br/>5 personally, or any of their names.<br/>6 Q. Do you know why the firefighters were there?<br/>7 A. I believe it might have went out as an injury accident.<br/>8 So, if it's an injury accident, both police and fire are<br/>9 dispatched to the location.<br/>10 Q. And when you say an "injury accident," you mean a motor<br/>11 vehicle accident?<br/>12 A. Yes.<br/>13 Q. Okay. Because it's my understanding, based on the<br/>14 reports attached or that we've marked as Exhibit 2, that<br/>15 the Plaintiff had driven a vehicle into one of the<br/>16 mobile homes; correct?<br/>17 A. Yes.<br/>18 Q. Okay. So, it was reported to Dispatch as a motor<br/>19 vehicle accident; is that correct?<br/>20 A. Yes, ma'am.<br/>21 Q. Okay. So, you arrive on scene.<br/>22 And tell me where you saw Barnhill and McKibben,<br/>23 please?<br/>24 A. Specifically, they were all together on top of<br/>25 Mr. Pellow when I arrived. Where they were in the mix,</p>                                                                               |
| <p style="text-align: right;">Page 39</p> <p>1 MS. DRUZINSKI: I have some questions for you, sir.<br/>2 * * *<br/>3 EXAMINATION<br/>4 BY MS. DRUZINSKI:<br/>5 Q. I'd like to go through in a little more detail your<br/>6 arrival and some of the things that happened.<br/>7 You said you were contacted by Dispatch; correct?<br/>8 That was the reason that you were brought to the scene?<br/>9 A. Dispatch was looking for another car, and no one was<br/>10 responding. And I was on the road. We typically don't<br/>11 respond -- they don't dispatch supervisors, so I<br/>12 volunteered for it. I told Dispatch that I'm a long<br/>13 ways off, and I started heading that way.<br/>14 Q. About how long do you think it took you from the time<br/>15 you told Dispatch you were on your way until you got to<br/>16 the scene?<br/>17 A. Well, I was somewhere in the Van Dyke -- between Eight<br/>18 and a half and Nine Mile area, and they were at between<br/>19 Ten Mile between Ryan and Dequindre. That's about<br/>20 4 miles, I'm guessing, 4 to 5. Maybe 4 minutes,<br/>21 roughly, 5 minutes.<br/>22 Q. Did you have lights and sirens on, on the way there?<br/>23 A. Yes, I did.<br/>24 Q. Now, you said you arrived and you saw Barnhill, McKibben<br/>25 and four to five firefighters; correct?</p> | <p style="text-align: right;">Page 41</p> <p>1 I couldn't tell you.<br/>2 Q. Okay. Where was your vehicle in relation to the mobile<br/>3 home that is pictured in Number 1 here?<br/>4 A. This is east, west, south, north.<br/>5 So, I'm coming up from Ten Mile, and I had passed<br/>6 them. And one of the officers, while they were tussling<br/>7 with Mr. Pellow, said, "Hey, Sarg, you passed us."<br/>8 Because I didn't see them. I went right by them,<br/>9 because right here was the fire truck. So, I passed<br/>10 them probably 150 feet, 200 feet. That's just an<br/>11 estimate.<br/>12 I stopped, backed up once I was about somewhere<br/>13 around here, and then I exited and ran over to them.<br/>14 Q. So, you would have been driving past them, and they<br/>15 would have been on your right-hand side?<br/>16 A. Left-hand side.<br/>17 Q. They would have been your left-hand side.<br/>18 So, you --<br/>19 A. I was traveling north, and they were on the west side.<br/>20 Q. Okay. So, as you were driving northbound, you didn't<br/>21 see them on your left-hand side in front of the mobile<br/>22 home? You actually drove past them about 150 feet?<br/>23 A. Approximately.<br/>24 Q. Okay. And then you heard somebody call out to you.<br/>25 Do you know who that was?</p> |



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| <p style="text-align: right;">Page 42</p> <p>1 A. No.</p> <p>2 It was on the police radio, so it was either</p> <p>3 McKibben or Barnhill, one of the two.</p> <p>4 Q. Okay. And so during that time, do you think they were</p> <p>5 still interacting with Plaintiff, trying to get</p> <p>6 Plaintiff under control?</p> <p>7 A. Yes.</p> <p>8 Q. But they were able to contact you and say, "Sarg, you</p> <p>9 passed us"?</p> <p>10 A. Yes.</p> <p>11 Q. Did it sound like they were in distress at all?</p> <p>12 A. I don't remember.</p> <p>13 Q. Okay. So, then you back up, and you park your squad car</p> <p>14 roughly parallel to the mobile home; is that correct?</p> <p>15 A. It would be perpendicular, actually.</p> <p>16 Q. Oh, perpendicular. I'm sorry.</p> <p>17 A. Yes.</p> <p>18 Q. Basically -- you're right. Sorry. That would have been</p> <p>19 difficult parking.</p> <p>20 Perpendicular to the home, basically in line with</p> <p>21 the home?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Okay. So, you're now able to see them to your left?</p> <p>24 A. Yes.</p> <p>25 Q. And what did you see at the time you were looking to</p>                                                                                                      | <p style="text-align: right;">Page 44</p> <p>1 Q. Okay.</p> <p>2 A. No one was standing on his back at that time.</p> <p>3 Q. Okay. So, everybody was standing around him?</p> <p>4 A. They were like kneeling on him and trying to, you know,</p> <p>5 muscle his arms together to get him handcuffed.</p> <p>6 Q. Was he resisting at that time?</p> <p>7 A. It appeared to be, yes.</p> <p>8 Q. Okay. So, who did you see handcuff the Plaintiff?</p> <p>9 A. I did not see who specifically handcuffed him.</p> <p>10 Q. So, when you stood close enough to where you could -- I</p> <p>11 would say within a few feet of him, did he have</p> <p>12 handcuffs on his hands?</p> <p>13 A. Not when I initially approached, no.</p> <p>14 Q. Okay. Who did you see handcuff him?</p> <p>15 A. I did not see anyone actually handcuff him.</p> <p>16 He was handcuffed eventually, but I was assessing</p> <p>17 the whole situation.</p> <p>18 Q. So, you're not sure who actually handcuffed him?</p> <p>19 A. No, ma'am.</p> <p>20 Q. Okay. And I believe this might have been asked earlier,</p> <p>21 but did he have -- you're not sure if he had cuffs on</p> <p>22 his ankles; correct?</p> <p>23 A. No. I read that in a report, and I've never personally</p> <p>24 handcuffed anyone's ankles. And I did not see anyone</p> <p>25 handcuff his ankles.</p> |
| <p style="text-align: right;">Page 43</p> <p>1 your left?</p> <p>2 A. I just saw a mass of people at that time. So, I just</p> <p>3 exited, and I ran over to them. And they were, I guess,</p> <p>4 100 feet, maybe 150 feet.</p> <p>5 So, I just ran up to this area, and they were all</p> <p>6 in this area. Mr. Pellow's head was facing towards the</p> <p>7 trailer. His feet were this way, and all the firemen</p> <p>8 and police were on top of him.</p> <p>9 Q. Okay. So, when you say you "saw a mess," you saw what</p> <p>10 would be two officers and four to five firemen all on</p> <p>11 top of the Plaintiff at the same time?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And did you say anything to anybody while you</p> <p>14 were running up?</p> <p>15 A. While I was running up, no.</p> <p>16 Q. Do you know specifically where McKibben and Barnhill</p> <p>17 were in that -- what you called "a mess of people"?</p> <p>18 A. No.</p> <p>19 Q. Do you know if they were on his back, on his legs,</p> <p>20 standing next to him? Do you know specifically where</p> <p>21 they were standing?</p> <p>22 A. No.</p> <p>23 Q. Okay. Do you know if anybody was standing on the back</p> <p>24 of the Plaintiff at that time?</p> <p>25 A. No.</p> | <p style="text-align: right;">Page 45</p> <p>1 Q. Okay. But he did have handcuffs on his wrists, and his</p> <p>2 hands would have been behind his back; correct?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Okay. And then who rolled him over?</p> <p>5 Or, actually, I should step back.</p> <p>6 Did you see anybody roll him over at that time, or</p> <p>7 was he laying prone on his stomach?</p> <p>8 A. He was still prone on his stomach.</p> <p>9 Q. Okay. Did you speak to the Plaintiff at any time while</p> <p>10 he was laying on the ground?</p> <p>11 A. No.</p> <p>12 Q. Which officer did you speak with first when you arrived</p> <p>13 on the scene?</p> <p>14 A. I think the first thing I actually said was probably,</p> <p>15 "McKibben, get off of him."</p> <p>16 Because I didn't actually participate. I'm just</p> <p>17 assessing the scene, and they're getting him under</p> <p>18 control, and he was cuffed quickly after I arrived. And</p> <p>19 the firemen had gotten up. Barnhill had gotten up.</p> <p>20 McKibben had stayed with Pellow, and that's when a</p> <p>21 female approached me. And I had walked over to</p> <p>22 somewhere around this area.</p> <p>23 Q. You're pointing to the table and the picture.</p> <p>24 So, how many feet away from the Plaintiff do you</p> <p>25 think you walked?</p>                   |

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| <p style="text-align: right;">Page 46</p> <p>1 A. Like 15, 20 feet.</p> <p>2 That's just a guess.</p> <p>3 Q. Okay. And when you're 15 or 20 feet away, where are</p> <p>4 McKibben and Barnhill?</p> <p>5 A. I don't know where Barnhill is, but McKibben is over</p> <p>6 here with Pellow.</p> <p>7 Q. Standing right next to Pellow?</p> <p>8 A. I don't know if he was standing next to him. He was --</p> <p>9 I don't know where he was at that time when I approached</p> <p>10 the white female.</p> <p>11 Q. Okay. And who was -- you don't know who the white</p> <p>12 female is?</p> <p>13 A. No.</p> <p>14 Q. Is it the woman sitting across from you?</p> <p>15 A. I couldn't tell you.</p> <p>16 Q. Okay. Did you get her name?</p> <p>17 A. No.</p> <p>18 Q. And what did she tell you?</p> <p>19 A. We didn't have any interaction. It was -- she was</p> <p>20 walking up to me, and we were walking together, and she</p> <p>21 was looking over my shoulder -- my right shoulder, and I</p> <p>22 just naturally responded, and McKibben was on</p> <p>23 Mr. Pellow's back.</p> <p>24 Q. Okay. About how soon after you saw all the officers</p> <p>25 step away from the Plaintiff did this female approach</p> | <p style="text-align: right;">Page 48</p> <p>1 A. Yes.</p> <p>2 Q. Did you listen to the audio from all of the officers?</p> <p>3 A. Not the entire -- I just locate the videos, and then I</p> <p>4 lock them so they don't get purged from the system</p> <p>5 because they get purged after approximately -- I -- it</p> <p>6 was 30 days. The Vision Hawk system is an older system,</p> <p>7 and it wasn't very good. So, you have to lock them</p> <p>8 pretty quick, and when they get unlocked, they</p> <p>9 disappear.</p> <p>10 So, I locked them, and I just briefly looked at</p> <p>11 them. I don't think I looked at them from beginning to</p> <p>12 end.</p> <p>13 Q. Okay. It was a little different question than what I</p> <p>14 was asking.</p> <p>15 A. Oh, I'm sorry.</p> <p>16 Q. That's okay. No. That was maybe a poor question on my</p> <p>17 part, so I'll start there.</p> <p>18 Were you in charge of the records at the time?</p> <p>19 A. No.</p> <p>20 Q. Okay. Who was in charge of records?</p> <p>21 A. John Barnes.</p> <p>22 I believe he's still in charge of records.</p> <p>23 Q. Do you know if it's possible to remove audio from the</p> <p>24 video?</p> <p>25 In other words, how do you have the video but take</p>                                                                                                  |
| <p style="text-align: right;">Page 47</p> <p>1 you?</p> <p>2 A. Just a couple seconds.</p> <p>3 Q. Okay. So, in the couple seconds that you turned and</p> <p>4 walked about 15 feet away, it's your testimony that</p> <p>5 McKibben went and stood on Plaintiff's back and started</p> <p>6 bouncing?</p> <p>7 A. Correct.</p> <p>8 Q. With his two feet, standing right on the center of his</p> <p>9 back?</p> <p>10 A. I don't know where they were on his back, but he was</p> <p>11 standing on top of Mr. Pellow's back.</p> <p>12 Q. Do you think it was on -- can you tell me where on his</p> <p>13 body he was standing?</p> <p>14 A. No, ma'am.</p> <p>15 Q. It was just somewhere while he was laying down?</p> <p>16 A. Yes.</p> <p>17 Q. How long was he standing on the Plaintiff's back?</p> <p>18 A. When I looked over my shoulder, I immediately ordered</p> <p>19 him off of Pellow. So, it couldn't have been more than</p> <p>20 a few seconds.</p> <p>21 Q. Okay. You had your audio, your mic on?</p> <p>22 A. Yes.</p> <p>23 Q. McKibben had his mic on?</p> <p>24 A. Yes.</p> <p>25 Q. Barnhill had his mic on?</p>                                                                                        | <p style="text-align: right;">Page 49</p> <p>1 away the audio?</p> <p>2 A. I don't know.</p> <p>3 Q. So, then my question was, when you reviewed -- it's my</p> <p>4 understanding you reviewed some of the video and the</p> <p>5 audio with your attorney; right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And I don't want to know anything that you said</p> <p>8 to the attorney or what your attorney said to you, but</p> <p>9 did you listen to the audio from either McKibben or</p> <p>10 Barnhill?</p> <p>11 A. We went over the McKibben one a couple times. I don't</p> <p>12 remember if we went over Barnhill's. I think we glanced</p> <p>13 at it, but I -- you'd have to refresh my memory. I</p> <p>14 don't remember.</p> <p>15 Q. Did you hear yourself on McKibben's audio?</p> <p>16 A. We only listened to it once, and it's on speakers,</p> <p>17 unfortunately. It's not very good quality, so there's a</p> <p>18 lot of static. I may have heard myself once or twice,</p> <p>19 but I'm not positive. I'd have to listen to it again.</p> <p>20 Q. When you told McKibben to get off the Plaintiff's back,</p> <p>21 did McKibben respond to you verbally in any way?</p> <p>22 A. No.</p> <p>23 Q. Did you hear yourself on McKibben's video -- or -- I'm</p> <p>24 sorry -- McKibben's audio, telling him to get off his</p> <p>25 back?</p> |



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| <p style="text-align: right;">Page 50</p> <p>1 A. No.</p> <p>2 Q. Did you hear yourself on Barnhill's audio telling</p> <p>3 McKibben to get off the Plaintiff's back?</p> <p>4 A. No.</p> <p>5 Q. And this incident is not captured on any of the squad</p> <p>6 car videos?</p> <p>7 A. No.</p> <p>8 Q. Now, when you went back and locked the audio and the</p> <p>9 video, did you lock a specific time, or do you just lock</p> <p>10 the audio and video for that shift?</p> <p>11 A. Just lock it for the entire segment of that incident.</p> <p>12 Sometimes -- it's sort of -- I don't remember all the</p> <p>13 details, but that Vision Hawk system isn't very good.</p> <p>14 Sometimes it breaks it into segments if it -- sometimes</p> <p>15 you'll get a whole shift in one -- in one block that you</p> <p>16 can lock. Sometimes it's only per incident. It depends</p> <p>17 on if the officer shuts it off, if he changes cars, if</p> <p>18 he goes back to the station, and it will download -- it</p> <p>19 used to download automatically. So, this was, I</p> <p>20 believe, at 11:00 or 12:00 in the morning. If they had</p> <p>21 gone to an accident, say, 9:00, or had a death of some</p> <p>22 kind or some kind of other incident, and they had gone</p> <p>23 back to the station to go to the bathroom or write a</p> <p>24 report or see a supervisor or do whatever, when their</p> <p>25 car is close to the police department, it automatically</p> | <p style="text-align: right;">Page 52</p> <p>1 A. He gets off.</p> <p>2 Q. And then where does McKibben go?</p> <p>3 A. I don't know because I ran to the firemen.</p> <p>4 Q. And how far away are you at this point from Plaintiff?</p> <p>5 About 15 or -- 10 or 15 feet away, I think you said?</p> <p>6 A. 15 or 20, yeah. 15, 20 feet, roughly.</p> <p>7 Q. And you said he -- you saw his face start to turn red or</p> <p>8 purple?</p> <p>9 A. Correct.</p> <p>10 Q. And was that immediately as McKibben stood off of him?</p> <p>11 A. I looked at him right away, and, yes, he was a different</p> <p>12 color. He was darker purple.</p> <p>13 Q. And did the firefighters perform any kind of medical</p> <p>14 treatment on the Plaintiff on scene?</p> <p>15 A. I don't remember.</p> <p>16 I know that they had went to Mr. Pellow, loaded him</p> <p>17 up and then took him away. I would imagine they</p> <p>18 probably did, but I can't say that I saw something.</p> <p>19 Q. So, after they take Mr. Pellow away, what do you do?</p> <p>20 A. I request evidence technicians and the detective bureau,</p> <p>21 and I start -- I told an officer to stay here at the</p> <p>22 scene so no one messes with anything here. I ordered</p> <p>23 another officer over at the scout car -- or not the</p> <p>24 scout car -- the accident scene. Matheney showed up</p> <p>25 shortly thereafter.</p> |
| <p style="text-align: right;">Page 51</p> <p>1 downloads.</p> <p>2 So, if I were to -- I don't know if I'm answering</p> <p>3 your question, but that would not have been locked</p> <p>4 because that would have already been downloaded. That</p> <p>5 would have been a different segment of the video for</p> <p>6 that officer that day.</p> <p>7 Q. So, is -- was there any way for you to lock the video</p> <p>8 but not the audio?</p> <p>9 A. No.</p> <p>10 Q. Did you have your mic on that day?</p> <p>11 A. Yes.</p> <p>12 Q. Are you positive?</p> <p>13 A. Yes.</p> <p>14 Q. How do you know?</p> <p>15 A. Because I listened to the video when I got back to the</p> <p>16 station.</p> <p>17 Q. And that was before or after you locked it?</p> <p>18 A. I don't remember. I listened to it and locked it at the</p> <p>19 same time. I don't remember if I located it and locked</p> <p>20 it and listened to it, or if I listened to it and then</p> <p>21 locked it. I don't remember.</p> <p>22 Q. So, back to the scene.</p> <p>23 You see McKibben standing on the Plaintiff's back.</p> <p>24 You tell him to get off.</p> <p>25 And then what does McKibben do?</p>                                                                                                                                                                                                                                                                                                 | <p style="text-align: right;">Page 53</p> <p>1 I remember going into Mrs. Pellow's trailer and</p> <p>2 talking to her two sons who were playing video games</p> <p>3 that day, and I didn't know that Mr. Nathan Pellow</p> <p>4 wasn't their father. I felt sort of bad for the kids,</p> <p>5 you know, because I found out right around that same</p> <p>6 time that he had passed away. So, I was in the trailer</p> <p>7 with Mrs. Pellow, and I think a couple other officers</p> <p>8 showed up around the same time.</p> <p>9 Q. And so at what point did you go back to the station that</p> <p>10 day?</p> <p>11 A. I don't remember.</p> <p>12 Q. Sometime that shift?</p> <p>13 A. Yes.</p> <p>14 Q. And that's when you asked Captain Matheney to have a</p> <p>15 debriefing?</p> <p>16 A. Correct.</p> <p>17 Q. Now, you said, based on reading the reports, you assumed</p> <p>18 that a debriefing occurred based on some of the language</p> <p>19 used by the other officers in the reports; is that</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you have any evidence that establishes that this</p> <p>23 debriefing ever took place?</p> <p>24 A. No. That's just a practice based on that language, that</p> <p>25 usually officers are told by their union president and</p>                                                                                                          |

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| <p style="text-align: right;">Page 54</p> <p>1 lawyer -- usually a union lawyer/attorney is called in</p> <p>2 on something like this, and they sort of put that</p> <p>3 language in there. I don't know if it protects them in</p> <p>4 some kind of way. But that's usually what happens.</p> <p>5 Q. But you have no idea if a debriefing ever took place?</p> <p>6 A. I do not.</p> <p>7 Q. Did you ever ask any of the other officers that were on</p> <p>8 scene whether a debriefing ever took place?</p> <p>9 A. I did not.</p> <p>10 Q. And it's your testimony today that you did not write the</p> <p>11 report that has your name on it; correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Why didn't you write a report?</p> <p>14 A. Because protocol is you have a debriefing and then you</p> <p>15 write the report afterwards.</p> <p>16 Q. Have you ever -- have you ever written a report without</p> <p>17 having a debriefing?</p> <p>18 A. On a death like that, no.</p> <p>19 Q. So, is protocol, then, if a briefing doesn't take place,</p> <p>20 you simply don't write a report?</p> <p>21 A. It depends on -- what you're saying is, we write lots of</p> <p>22 reports. I probably have written tens of thousands, if</p> <p>23 not 100,000 reports in my life. But when there's a</p> <p>24 death like this, there's a debriefing. If there's a</p> <p>25 shooting, if there's some kind of death related to</p> | <p style="text-align: right;">Page 56</p> <p>1 Q. And Plaintiff counsel may have asked you this.</p> <p>2 Do you think this incident had anything to do with</p> <p>3 your termination?</p> <p>4 MR. LISTMAN: I'm going to again place the</p> <p>5 objection on the record with regard to any questions</p> <p>6 regarding his termination under FRE 404, FRE 609 and the</p> <p>7 Fifth Amendment.</p> <p>8 BY MS. DRUZINSKI:</p> <p>9 Q. You don't like the City of Warren; right?</p> <p>10 A. I love them. I chose to get hired -- I chose that</p> <p>11 position over about a dozen other police departments</p> <p>12 that had offered me employment.</p> <p>13 Q. Are you upset that they won't hire you back right now?</p> <p>14 A. Arbitration is coming up, and that should be a win</p> <p>15 easily.</p> <p>16 Q. What if you're not hired back?</p> <p>17 A. I've got --</p> <p>18 MR. LISTMAN: Objection. I don't think there's a</p> <p>19 question on the ground at this point. So --</p> <p>20 BY MS. DRUZINSKI:</p> <p>21 Q. What criminal charges are currently pending against you?</p> <p>22 MR. LISTMAN: Objection, again, under FRE 404, FRE</p> <p>23 609 and the Fifth Amendment.</p> <p>24 MS. DRUZINSKI: Well, I want to -- I just want to</p> <p>25 know what charges are pending, though, which I think</p> |
| <p style="text-align: right;">Page 55</p> <p>1 officer action, there's a debriefing.</p> <p>2 I've never written a report without that</p> <p>3 debriefing.</p> <p>4 Q. So, why didn't -- so, it's your testimony that you saw</p> <p>5 another officer stand on the back of someone, and it's</p> <p>6 your testimony that you think he passed away soon after</p> <p>7 that.</p> <p>8 Why didn't you think it was important enough to</p> <p>9 memorialize that in a report?</p> <p>10 A. Because I can't write a report until after the</p> <p>11 debriefing. And I told the third in command at the</p> <p>12 police department what had occurred, and I was waiting</p> <p>13 for him, when it was convenient for him, to have that</p> <p>14 debriefing. Then I would have written the report.</p> <p>15 Q. So, rather than memorialize this incident in a report,</p> <p>16 you waited two weeks, and then, I believe you said,</p> <p>17 moved on; right?</p> <p>18 A. Correct. That's correct.</p> <p>19 Q. Did you ever -- within those two weeks ever write any</p> <p>20 notes to yourself or notes to anybody else to try and</p> <p>21 memorialize this event before your memory faded?</p> <p>22 A. No.</p> <p>23 Q. Now, you testified that you were terminated from the</p> <p>24 City of Warren on April 17th, 2014; correct?</p> <p>25 A. That is correct.</p>                                                                  | <p style="text-align: right;">Page 57</p> <p>1 that is permissible to advise what charges are currently</p> <p>2 pending.</p> <p>3 MR. LISTMAN: Well, we're going to leave the</p> <p>4 objection. I'm sure you can do your own research.</p> <p>5 BY MS. DRUZINSKI:</p> <p>6 Q. Does that have anything to do with the City of Warren?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever spoken to the Plaintiff attorney regarding</p> <p>9 this case?</p> <p>10 A. Yes, I have.</p> <p>11 Q. When did you speak with him?</p> <p>12 A. July 2nd, I believe.</p> <p>13 Q. What did you guys discuss?</p> <p>14 A. I requested a copy of the Complaint because the City of</p> <p>15 Warren had had it for about six weeks and didn't forward</p> <p>16 me my copy.</p> <p>17 Q. What else did you guys discuss?</p> <p>18 A. That was it.</p> <p>19 Q. Did you discuss with him your thoughts about the case or</p> <p>20 what you believe happened?</p> <p>21 A. No.</p> <p>22 Q. Did you discuss this case with anybody from Plaintiff's</p> <p>23 family?</p> <p>24 A. No.</p> <p>25 Q. Is that July 2nd discussion with Plaintiff's attorney</p>                                                                                                                                                                                             |


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| <p style="text-align: right;">Page 58</p> <p>1 the only time you spoke with him?</p> <p>2 A. Yes.</p> <p>3 Q. Was that via telephone or via e-mail or via letter?</p> <p>4 A. That was a phone call.</p> <p>5 Q. Did the City of Warren ever provide you with a copy of</p> <p>6 the Complaint?</p> <p>7 A. You did, yes.</p> <p>8 Q. Just making sure.</p> <p>9 A. It was July 27th, about two months after it was filed.</p> <p>10 Q. You were being represented at the time; right?</p> <p>11 A. Yes, I am.</p> <p>12 Q. Have you ever spoken with Captain Matheney regarding</p> <p>13 this incident since it occurred?</p> <p>14 A. No.</p> <p>15 Q. What about Commissioner Green or anybody else with</p> <p>16 higher authority than Captain Matheney?</p> <p>17 A. No.</p> <p>18 Q. Have you spoken with anybody from the press regarding</p> <p>19 this incident?</p> <p>20 A. Yes, I have.</p> <p>21 Q. Who have you spoken to?</p> <p>22 A. Norb Franz.</p> <p>23 THE REPORTER: I'm sorry. The name?</p> <p>24 A. Norb Franz from The Macomb Daily, N-o-r-b F-r-a-n-z.</p> <p>25 He's been doing an ongoing story about my whole</p> | <p style="text-align: right;">Page 60</p> <p>1 Q. Did you at any time during the Pellow incident on August</p> <p>2 30th, 2013 touch Mr. Pellow in any way?</p> <p>3 A. No.</p> <p>4 Q. Did you at any time on August 30th, 2013 physically</p> <p>5 touch Mr. Pellow in any way?</p> <p>6 A. No.</p> <p>7 Q. So, you didn't kick Mr. Pellow on August 30th, 2013?</p> <p>8 A. No.</p> <p>9 Q. You didn't hit Mr. Pellow on August 30th, 2013?</p> <p>10 A. No.</p> <p>11 Q. I just want to be absolutely 100 percent clear.</p> <p>12 On August 30th, 2013, you did not hold, hit or</p> <p>13 physically touch Mr. Pellow in any way?</p> <p>14 A. I did not.</p> <p>15 MR. LISTMAN: Thank you.</p> <p>16 MR. SKLAR: Okay. I just have some follow-up.</p> <p>17 * * *</p> <p>18 RE-EXAMINATION</p> <p>19 BY MR. SKLAR:</p> <p>20 Q. And I'm going to try to summarize what the testimony is</p> <p>21 so far today.</p> <p>22 Is -- on August 30th, 2013, there comes a point in</p> <p>23 time where Mr. Pellow is face down and handcuffed;</p> <p>24 correct?</p> <p>25 A. That's correct.</p>                                                                                                                              |
| <p style="text-align: right;">Page 59</p> <p>1 situation here.</p> <p>2 BY MS. DRUZINSKI:</p> <p>3 Q. When did you last speak with him?</p> <p>4 A. It's been months. I'm not sure. I'd have to look at my</p> <p>5 e-mail.</p> <p>6 Q. Were you involved in any IA investigations regarding</p> <p>7 this incident?</p> <p>8 A. The Pellow matter?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. Do you know if anybody was?</p> <p>12 A. I do not know.</p> <p>13 Q. Were you the officer in charge of this incident?</p> <p>14 A. The officer in charge would be a detective. I believe</p> <p>15 it said in the reports Nearing was the OIC.</p> <p>16 MS. DRUZINSKI: I have no further questions for</p> <p>17 you, sir.</p> <p>18 Your attorney may have some.</p> <p>19 MR. LISTMAN: I've got just two questions. Give me</p> <p>20 one second.</p> <p>21 * * *</p> <p>22 EXAMINATION</p> <p>23 BY MR. LISTMAN:</p> <p>24 Q. Okay. Mr. Gill, I want to be very clear on this.</p> <p>25 A. Uh-huh.</p>                                                                                                                                   | <p style="text-align: right;">Page 61</p> <p>1 Q. He is no longer a threat of flight; correct?</p> <p>2 A. It didn't appear to be, no.</p> <p>3 Q. Right.</p> <p>4 No longer a threat of flight; correct?</p> <p>5 A. He -- it didn't appear to be much of a threat.</p> <p>6 Q. And then you see Officer McKibben stand on Mr. Pellow's</p> <p>7 back and bounce?</p> <p>8 A. Correct.</p> <p>9 Q. And Mr. Pellow's physical condition changes for the</p> <p>10 worse after that event?</p> <p>11 A. It changed from being red in the face and breathing</p> <p>12 heavily to purple and more or less, for better lack of a</p> <p>13 word, gasping.</p> <p>14 Q. And at the time that Officer McKibben stood and bounced</p> <p>15 on Mr. Pellow's back, EMS was about to leave the scene;</p> <p>16 correct?</p> <p>17 A. I'm not sure if they were leaving the scene.</p> <p>18 Q. But they had left the area of Mr. Pellow?</p> <p>19 A. They had left the area of Mr. Pellow.</p> <p>20 Q. As had the other officers?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Now, how much -- how tall, from your estimation,</p> <p>23 is Officer McKibben?</p> <p>24 A. I'm about 6 foot.</p> <p>25 I would say he's 6 foot, 6 foot 1.</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 Q. About how much does he weigh from your estimation?</p> <p>2 A. My guess would be 230 to 250.</p> <p>3 Q. Okay. And you never wrote a report concerning this</p> <p>4 incident, even the one that appears in Exhibit 2;</p> <p>5 correct?</p> <p>6 A. That is correct.</p> <p>7 Q. And the audio portion of your recording which you locked</p> <p>8 and preserved has disappeared; correct?</p> <p>9 A. It's not on the copy that Attorney Listman showed me.</p> <p>10 MR. SKLAR: Okay. I have nothing else. Thank you.</p> <p>11 * * *</p> <p>12 RE-EXAMINATION</p> <p>13 BY MS. DRUZINSKI:</p> <p>14 Q. Did you ever threaten to kill anybody at the Warren</p> <p>15 Police Department?</p> <p>16 A. No.</p> <p>17 MS. DRUZINSKI: Okay. No further questions.</p> <p>18 MR. SKLAR: Okay. Thank you, sir.</p> <p>19 MR. LISTMAN: That's it. I'm done.</p> <p>20 MR. SKLAR: Thank you so much. I appreciate your</p> <p>21 time.</p> <p>22 THE REPORTER: Joel, do you want to order the</p> <p>23 transcript?</p> <p>24 MR. SKLAR: Yeah, I do.</p> <p>25 THE REPORTER: Thank you.</p> | <p style="text-align: right;">Page 64</p> <p>1 STATE OF MICHIGAN )</p> <p>2 COUNTY OF OAKLAND )</p> <p>3 CERTIFICATE OF NOTARY PUBLIC</p> <p>4 I do hereby certify that the witness, whose</p> <p>5 attached testimony was taken in the above matter, was</p> <p>6 first duly sworn to tell the truth; the testimony</p> <p>7 contained herein was reduced to writing in the presence</p> <p>8 of the witness by means of stenography; afterwards</p> <p>9 transcribed; and is a true and complete transcript of</p> <p>10 the testimony given.</p> <p>11 I further certify that I am not connected by blood</p> <p>12 or marriage with any of the parties; their attorneys or</p> <p>13 agents; and that I am not interested, directly or</p> <p>14 indirectly, in the matter of controversy.</p> <p>15 In witness whereof, I have hereunto set my hand</p> <p>16 this day at Highland, Michigan, County of Oakland, State</p> <p>17 of Michigan on Thursday, May 12, 2016.</p> <p>18 </p> <p>19 <u>John J. Slatin</u></p> <p>20 John J. Slatin, RPR, CSR-5180</p> <p>21 Certified Shorthand Reporter</p> <p>22 Notary Public, Oakland County, Michigan</p> <p>23 My commission expires: July 25, 2017</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 63</p> <p>1 Julie, do you want a copy?</p> <p>2 MS. DRUZINSKI: Of course.</p> <p>3 THE REPORTER: Thank you.</p> <p>4 MR. LISTMAN: Copy.</p> <p>5 MS. DRUZINSKI: Do E-trans.</p> <p>6 THE REPORTER: Only?</p> <p>7 MS. DRUZINSKI: Yeah, on paper, but E as well.</p> <p>8 THE REPORTER: Okay.</p> <p>9 MS. DRUZINSKI: Thank you.</p> <p>10 THE REPORTER: Thanks.</p> <p>11 (Deposition concluded at 3:59 p.m.)</p> <p>12 * * *</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |